

Opinion of the Court.

SANTA ANNA v. FRANK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF ILLINOIS.

Submitted January 9, 1885.—Decided February 2, 1885.

When a jury is waived by stipulation, a general finding of the issues by the court is not open to review.

The declaration contained a special count upon municipal bonds and coupons, and general counts for money had and received, &c. A jury was waived, and the court found generally on all the issues. The bill of exceptions contained all the evidence, but showed no exception to its admission. *Held*, That the general counts were sufficient to support the judgment, and that questions raised as to the subject matter of the special count were therefore immaterial.

The facts which make the case are stated in the opinion of the court.

Mr. Hamilton Spencer and *Mr. Thomas F. Tipton* for plaintiff in error.

Mr. T. C. Mather for defendant in error.

MR. JUSTICE HARLAN delivered the opinion of the court.

The first count in the declaration is upon certain bonds and coupons purporting to be the obligations of the town of Santa Anna, in the State of Illinois, and to have been issued in pursuance of an act of the legislature of Illinois, entitled "An Act to amend the articles of association of the Danville, Urbana, Bloomington and Pekin Railroad Company, and to extend the powers of and confer a charter upon the same," approved February 28, 1867, and in accordance with the vote of the electors of said township, at the special election held July 21, 1866. The declaration, also, contains the common counts for money paid, money had and received, &c. A jury having been waived by a stipulation in writing, the case was tried by the court. The bill of exceptions, which embodies all the evidence, does not show any exception by either party to the admission of evidence, and concludes: "This was all the evi-

Syllabus.

dence offered by either party, and thereupon the court found the issues for the plaintiff." A judgment was entered for plaintiff, and a motion in writing for new trial was overruled, to which defendant excepted.

1. There is no special finding of facts; and the general finding of the issues for the plaintiff is not open to review by this court. *Martinton v. Fairbanks*, 112 U. S. 670.

2. The questions discussed by counsel for the defendant as to the legal authority of the town to issue the bonds referred to fairly arise upon the first count of the declaration. But their determination cannot affect the judgment, for the common counts are sufficient under the statutes of Illinois to support the judgment, without reference to any question of the legal authority to issue the bonds described in the first count. Rev. Stat. Ill. 1870, ch. 110, § 58; *Bond v. Dustin*, 112 U. S. 604.

Judgment affirmed.

McARTHUR & Others v. SCOTT & Others.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF OHIO.

Argued January 28, 29, 1884.—Reargued April 7, 8, 9, 1884.—Decided March 2, 1885.

Words in a will, directing land to be conveyed to or divided among remaindermen at the expiration of a particular estate, are to be presumed, unless clearly controlled by other provisions, to relate to the beginning of enjoyment by remaindermen, and not to the vesting of the title in them.

A testator devised lands and personal property to his executors and their successors, and their heirs, in trust; and directed that the income, until his youngest grandchild, who might live to be twenty-one years of age, should arrive at that age, should be divided equally among the testator's children, or the issue of any child dying, and among the grandchildren also as they successively came of age; that "after the decease of all my children, and when and as soon as the youngest grandchild shall arrive at the age of twenty-one years," the lands should be "inherited and equally divided between my grandchildren *per capita*," in fee, and that "in like manner" the personal property should "at the same time be equally divided among my said grandchildren, share and share alike *per capita*;" and that if any grandchild should have died before the final division, leaving children, they